THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1278 AND 1328 OF 2007

DATED 9th AUGUST, 2007

BETWEEN

Md.Kannusuddin, S/o late Wazeeruddin

… Petitioners

AND

The Mandal Revenue Officer, Saroornagar Mandal, Ranga Reddy District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.1278 AND 1328 OF 2007

COMMON ORDER:

This common order shall dispose of both the writ petitions as the pleadings and the points that arise for consideration are the same and the land around which the dispute revolves is the part of the same field number.

W.P.No.1278 of 2005 is filed by Md.Kannusuddin (hereafter called, first petitioner) seeking a writ of Mandamus declaring the proposed action of the respondents, namely, Mandal Revenue Officer, Saroornagar (MRO); Revenue Divisional Officer, Goshamahal, Hyderabad (RDO) and the District Collector, Ranga Reddy District to interfere in the petitioner's possession over his land admeasuring Acs.15.10 guntas in survey No.99/1, Pahadi Shareef, Saroornagar Mandal, Ranga Reddy District, as illegal and arbitrary and violative of Article 300A of Constitution of India. W.P.No.1328 of 2007 is filed by Mohd.Khaja Mazharuddin (hereafter called, second petitioner) praying for a similar relief in respect of extent of Acs.15.10 guntas in survey No.99/1. During the course of the proceedings, the petitioners have filed additional affidavit accompanying the writ petition along with additional documents. The MRO filed counter affidavit and after the petitioners filed separate reply affidavits, the MRO also filed additional counter affidavit along with additional documents. However, it is not necessary to refer in detail to all pleadings, allegations and counter allegations, as it would unnecessarily increase the length of this order. A brief reference is made to the basic facts in the following paragraphs.

The case of the petitioners is as follows. The land in survey No.99/1 admeasuring Acs.2,138.34 guntas situated at Mamidipalle Village, is part of estate (Mafi Inam) of late Maharaja Kishen Prasad, Prime Minister of H.E.H.Nizam the VI, Mir Mehaboob Ali Khan. He acquired the same from Raja Nanak Baksh on condition of annual payment of Rs.30,000/- to the son of late Raja Nanak Baksh as per the Farman of Nizam. After death of

Maharaja Kishen Prasad as ordered by a Royal Farman, dated 30.05.1940 (22nd Rabiussani, 1359 Hijri), an enquiry was held by Atiyat Adalat to determine succession and heritage. Khaja Prasad, son of Maharaja Kishen Prasad, was declared as head of the estate but a Consultative Committee was appointed to look after the same without handing over the same to the successor. After death of Khaja Prasad, Raja Ratan Gopal and his three brothers, grandchildren of Maharaja (sons of daughter of Sultan Kanwal Bibi), were declared as legal heirs. But they did not take possession of the land. Raja Ratan Gopal Saincher sold the lands to late late Zal Rustumji Bastawala and his son Sam Lal Bastawala under an agreement of sale, dated 15.09.1956. All along, land was under occupation/encroachment of eighty (80) persons. In 1994, petitioners purchased land from one of the encroachers, obtained pattadar pass books and title deeds (PPB) from revenue authorities and allegedly developed mango garden, guava and other fruit gardens. They also constructed a compound wall with a gate. They obtained electricity and telephone connections. On 20.01.2007, the respondents without any notice or without initiating due process tried to interfere with peaceful possession and enjoyment of the petitioners. Proceedings under Land Acquisition Act, 1894 were not initiated and the petitioners are not served with any order for their eviction.

The case of respondents is as follows. After declaration of Independence of India, Hyderabad State under the Rule of the Nizam merged into Union of India. The Government of India with concurrence of the then Hyderabad Government entered into an agreement with H.E.H.Mir Osman Ali Khan, Nizam the VII on 25.01.1950. As per the said Agreement, which is called Blue Book, the properties specified therein were declared as the private property of the Nizam. The land in survey No.99 admeasuring Acs.2,142.01 guntas (corresponding to old survey Nos.22/1 and 126) which belonged to Nizam, was acquired by Government, under Land Acquisition Act, 1309 Fasli. A notification vide Government Memo No.1348/1105/A3/55-6, dated 28.02.1956 was issued and published in Hyderabad Government Gazette Part-I B, dated 15.03.1956. This dispute was ultimately carried to Supreme Court, which finally disposed of Civil Appeal No.246 of 1996, dated 22.04.1962 in terms of compromise. The revision survey was taken up in respect of old survey No.22/81. The same was converted into survey No.99/1 (Acs.2,131.38 guntas) and survey No.99/2 (Acs.15.23 guntas). Though land was acquired for forest purpose, Government issued orders for transfer the land to Department of Animal Husbandry by reason of orders in G.O.Ms.No.1489, dated 22.05.1965. In 2003, the Government issued orders in G.O.Ms.No.271, dated 12.09.2003 to transfer Acs.981.00, to A.P.Industrial Infrastructure Corporation Limited (APIIC) – fourth respondent (in W.P.No.1278 of 2007), who paid an amount of Rs.7.29 crores. APIIC also released a sum of Rs.1,02,52,000/- for payment of *ex gratia* of the encroachers @ Rs.50,000/- per acre. In 2003,

Government also issued orders of allotting an extent of Acs.1,051.34 guntas t o International Airport and Acs.98.12 for mining, roads, Government schools and residential houses. Possession was also handed over to all the allottees. APIIC in turn allotted land to various Government Departments and private institutions.

Learned counsel for petitioners submits that both the petitioners are owners and possessors of the lands and they cannot be dispossessed by the respondents. He also submits that the Government was never in possession of the land and even prior to formation of Hyderabad State, the land which formed part of Estate of Prime Minister was under encroachment of number of persons, that they perfected the title by adverse possession and that the petitioners purchased the land from the encroachers. He also submits that the petitioners raised fruit bearing trees, erected gate and are in possession of the land, and therefore, any arbitrary action on the part of respondents to dispossess petitioners would be unconstitutional and illegal.

Opposing the writ petition, learned Assistant Government Pleader submits that petitioners are not in possession of the land and the land has already been handed over to Government and to APIIC and International Airport. APIIC in turn allotted to number of Departments and private institutions and there is no land available, which petitioners can claim to be in possession. He submits that when there is a serious question of title between rival claimants, a writ petition would not lie. Lastly, he submits that when the petitioners are not in possession of land, there is no question of granting relief to petitioners.

It is beyond any doubt that the title and possession of the petitioners is seriously disputed by respondents. Adequate material is placed before this Court to show that the land was acquired for forest purpose in 1956 by paying compensation to the owners of the land i.e., the legal heirs and successors of the Nizam as the property in old survey No.22/1 and 126 formed part of private estate of Nizam. The issue of notification and passing of award under the relevant Land Acquisition Act, 1894 is a conclusive proof that the land absolutely vested in the Government. This is, however, seriously disputed by petitioners. In such an event the disputed question of title at least insofar as the land claimed by petitioners is concerned, is not a matter which can be adjudicated in a writ petition. The petitioners have to seek private law remedy by filing a suit.

It is well settled that ordinarily while exercising power of judicial review under Article 226 of Constitution of India, this Court would not decide disputed questions of title. **In State of Rajasthan v Bhawani Singh**[1], Supreme Court observed thus:

> Having heard the counsel for the parties, we are of the opinion that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ

petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

I n **Mohan Pandey v Usha Rani Rajgaria**[2], Usha Rani (respondent) before the Supreme Court, invoked the jurisdiction of High Court of Delhi under Article 226 of Constitution of India for restraining Mohan Pandey from interfering with her possession. She alleged that her property was let out to B.K.Pandey, who subsequently handed over to Mohan Pandey. She filed a suit for eviction, which was pending. While the suit was pending, the appellant illegally trespassed beyond the area which is subject matter of pending suit and therefore, she sought a writ under Article 226 of Constitution of India. The Delhi High Court disposed of the writ petition directing Mohan Pandey to remove grill for access to the backyard. On appeal to Supreme Court, the plea of Mohan Pandey was accepted. Their Lordships observed as under.

> …According to the stand of the landlord-respondent, since the police were taking a partisan attitude against her, the filing of a writ petition became necessary. We are unable to follow this argument. There is no doubt that the dispute is between two private persons with respect to an immoveable property. Further, a suit covering either directly a portion of the house-property which is in dispute in the present case or in any event some other parts of the same property is already pending in the civil court. The respondent justifies the step of her moving the High Court with a writ petition on the ground of some complaint made by the appellants and the action by the police taken thereon. We do not agree that on account of this development, the respondent was entitled to maintain a writ petition before the High Court. It has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged.

In a recent judgment of apex Court in **Dwarka Prasad Agarwal v B.D.Agarwal**[3], it was held:

> A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s.Writer and Publishers Pvt. Ltd. As also whether a partition or a family settlement was arrived or not, were

pending adjudication before the civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act.

In view of the above, this Court is not inclined to go into question of title and petitioners have to approach civil Court. Next question is whether petitioners have proved that they are in possession of the land. This is also an issue, which involves question of fact, ordinarily not adjudicated in a writ petition. The pattadar pass book and connected proceedings of first respondent, dated 05.11.2003 are filed in W.P.No.1328 of 2007. The petitioner relies on permission letter, dated 12.12.1997 granted by Pahadi Shareef Gram Panchayat for construction of house on 100 square yards, the receipts issued by Reliance Communications to petitioners and photographs showing a farm house with a few mango and gua trees in proof of possession.

In the counter affidavit filed by Mandal Revenue Officer while denying the issue of pattadar pass books, it is alleged that the proceedings, dated 05.11.2003 issued by MRO is false and that it is not issued from the Office of MRO. It is also alleged that in Form IB Register and in RO records, Khata number was not allotted to petitioner and his name was not entered as a pattadar or enjoyer. The pattadar pass book and proceedings available with petitioner are false and bogus. Similar allegations are made in the other writ petition as well. The petitioners have filed reply affidavit denying this aspect of the matter. Secondly, petitioner in W.P.No.1278 of 2007, Md.Kannusuddin relies on the receipt issued by Reliance Communications. The same is issued to one M.D.Kanisuddan, who is certainly a different person. Thirdly, the same cannot be correlated even remotely to the land in survey No.99/1 admeasuring Acs.15.10 guntas. Likewise, it is not possible to connect the photographs filed by Md.Kannusuddin to the land in question. Therefore, it must be held that petitioners failed to prove their possession. On the contrary, copies of official records and Judgment of the Supreme Court have been placed before this Court, which would throw that the land vested in the Nizam, was acquired by the Government for forest purposes, which would later allotted to different Government Departments. In the reply affidavit filed by petitioners, this aspect of the matter is not specifically denied. Petitioners, therefore, cannot claim any relief in these writ petitions.

In the result, for the above reasons, the writ petitions are devoid of any merit and are accordingly dismissed with costs.

_____

(V.V.S.RAO,J)

09.08.2007.

pln

---

[1] AIR 1992 SC 1018

[2] AIR 1993 SC 1225

[3] (2003) 6 SCC 230 = AIR 2003 SC 2686